Supreme Court, U.S.
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In The

# Supreme Court of the United States

October Term, 1996

NORMAN HAI YOUNG,

*Petitioner,*

vs.

THE STATE OF CALIFORNIA,

*Respondent.*

**On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California First Appellate District, Division Three**

## PETITION FOR WRIT OF CERTIORARI

TED W. CASSMAN
COOPER, ARGUEDAS & CASSMAN
5900 Hollis Street, Suite N
Emeryville, California 94608
Telephone: (510) 654-2000

*Attorneys for Petitioner*
*Norman Hai Young*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTIONS PRESENTED

1. Does California Vehicle Code Section 2805's authorization of warrantless inspections of automobile repair shops and numerous other locations constitute a valid administrative inspection provision or is it instead an unreasonable grant of warrantless search authority to the police?

2. May police officers rely on a statutory administrative provision for warrantless inspections as a pretext to conduct a criminal search without violating the Fourth and Fourteenth Amendments to the United States Constitution?

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## OPINION BELOW

The unreported opinion of the Court of Appeal, First Appellate District, Division Three for the State of California is reproduced in the Appendix. (App. 1.) The unreported order of the Supreme Court of California denying YOUNG's petition for discretionary review is also reproduced in the Appendix. (App. 18.)

## JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

The judgment of the California Court of Appeal was rendered on August 6, 1996, affirming Petitioner's 11 convictions of state firearm possession offenses. (App. 1.) The California Supreme Court summarily denied Young's request for discretionary review on November 26, 1996. (App. 18.) Under the Rules of the United States Supreme Court [hereafter "Supreme Court Rule"] 13(1) and 13(3), the time period for filing this petition extends to and includes February 24, 1997. This petition is therefore timely filed.

## STATUTES AND CONSTITUTIONAL PROVISIONS

California Vehicle Code Section 2805 provides as follows:

"(a) For the purpose of locating stolen vehicles, a member of the California Highway Patrol, or a member of a city police department or county sheriff's office whose

primary responsibility is to conduct vehicle theft investigations, may inspect any vehicle of a type required to be registered under this Code, or any identifiable vehicle component thereof, on a highway or in any public garage, repair shop, terminal, parking lot, or new or used car lot, automobile dismantler's lot, vehicle shredding facility, vehicle leasing or rental lot, vehicle equipment rental yard, vehicle salvage pool, or other similar establishment, or any agricultural or construction work location where work is being actively performed, and may inspect the title or registration of vehicles, in order to establish the rightful ownership or possession of the vehicle or identifiable vehicle component.

"As used in this subdivision, 'identifiable vehicle component' means any component which can be distinguished from other similar components by a serial number or other unique distinguishing number, sign, or symbol.

"(b) A member of the California Highway Patrol, or a member of a city police department or county sheriff's office whose primary responsibility is to conduct vehicle theft investigations, may also inspect, for the purposes specified in subdivision (a), implements of husbandry, special construction equipment, forklifts, and special mobile equipment in the places described in subdivision (a) or when such a vehicle is incidentally operated or transported upon a highway.

"(c) Whenever possible, inspections conducted pursuant to subdivision (a) or (b) shall be conducted at a

time and in a manner so as to minimize any interference with, or delay of, business operations."

## STATEMENT OF THE CASE

The San Francisco Police Department received information that Discount Muffler Shop on Folsom Street in San Francisco was possibly involved in the stripping of stolen vehicle cars and stolen vehicle parts. (RT 11-12.)[1] Beginning in December 1992, Inspector Van Koll conducted a criminal investigation. (RT 55-57.) On March 3, 1993 Van Koll decided to conduct a warrantless search of the premises of Discount Muffler Shop, purportedly under Vehicle Code § 2805. (RT 29-30; 59-60; 96; 142.) Van Koll and five other police officers arrived at the premises at approximately 5:15 p.m. (RT 66-67.) The officers entered the shop simultaneously through at least four different doors. (RT 32, 67, 70.) The officers were wearing San Francisco Police Department jackets. Upon entering the premises, the officers fanned out through the entire premises. (RT 67, 70.)

Inspector Van Koll presented his police identification to Appellant YOUNG and provided him with a copy of Vehicle Code § 2805. (RT 30-32.) Van Koll requested that YOUNG show him copies of his records and work orders for all the vehicles on the premises. YOUNG was cooperative, and the paperwork was in order. (RT 34, 75-76.)

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[1] All citations denoted "RT" are to the Reporters' transcript of the hearing on YOUNG's suppression motion on October 11, 1994. The transcript was included in the record on appeal.

Later, Van Koll observed YOUNG's business permit from the Bureau of Automotive Repair, which was displayed above an office door, had expired. (RT 38.) Van Koll asked YOUNG about the permit's status, and YOUNG told him that he had an updated permit in his business office. At the same time, another officer told YOUNG that he wished to check inside the office for vehicle parts and components. YOUNG opened the door to his business office, and Van Koll and another officer entered. (RT 38, 78, 120-121, 148.)

As YOUNG walked toward his desk to retrieve the permit, one of the officers noticed a knife on the desk. (RT 121-122.) The officer told YOUNG to move away from the desk and to sit down in a chair. The officers then inquired whether there were any other weapons in the office. YOUNG told the officer that there was a gun underneath the newspaper on the seat next to him. The officers removed the newspaper and found a fully loaded revolver. (RT 122.) The officers then inquired whether there were any other weapons. YOUNG directed the officers to an unlocked safe on top of the desk. Inside the safe Van Koll found three more loaded firearms. (RT 124.) The officers then proceeded to look under YOUNG's desk and found approximately a pound of marijuana inside a brown paper bag. The officers then arrested YOUNG for suspected possession of marijuana for sale. (RT 44, 86, 126.) No stolen vehicles or vehicles components were discovered by the officers.

## HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

In the trial court, YOUNG moved to suppress all evidence seized as a result of the warrantless search of the Discount Muffler premises on the grounds that Vehicle Code § 2805 was unconstitutional and that the officers' purported reliance on Section 2805 was a pretext for a criminal search. (RT 63.) The superior court denied the motion. (App. 21-25.) The court ruled that Section 2805 was constitutional. Further, although the superior court expressly found that the officers' reliance on Section 2805 was a pretext to conduct a criminal search, the court ruled that this fact did not affect the reasonableness of the officers' conduct. (App. 22-24.) YOUNG timely appealed to the California Court of Appeal.

The court of appeal agreed with both of the trial court's rulings. Relying on the analysis in *People v. Calvert*, 18 Cal.App.4th 1820, 1825-1836, 23 Cal.Rptr. 644 (1993), the court of appeal held that Vehicle Code § 2805 was a constitutionally valid administrative search provision. (App. 8-10.) In addition, the court of appeal ruled that the officers' subjective motivations and intentions were irrelevant to the constitutionality of their search. (App. 10-13.) As the Court explained, it "decline[d] to hold the Courts must delve into the subjective motivations of officers performing otherwise objectively reasonable and justifiable administrative inspections under Section 2805." (App. 13.) Without discussing whether any deference was appropriate to the trial court's findings and whether the clearly erroneous standard was applicable [see e.g. *People v. Roberts*, 2 Cal.4th 271, 303, 6 Cal.Rptr.2d 276, 826 P.2d 274 (1992); *People v. Taylor*, 6

Cal.App.4th 1084, 1092-1093, 8 Cal.Rptr.2d 439 (1992)], the court of appeal also "disagree[d] with the trial court's" finding that the officer's reliance on § 2805 was pretextual. (App. 11.)

## REASONS FOR GRANTING THE WRIT

### Introduction

The instant Petition should be granted for two reasons. First, the decision of the court of appeal approves a broad legislative delegation of warrantless search authority to local police which bears no relationship to the doctrine that this Court adopted when embracing the administrative inspection exception to the warrant requirement in the context of heavily regulated industries. See *Colonnade Corp. v. United States*, 397 U.S. 72, 90 S.Ct. 774, 25 L.Ed.2d 60 (1970); *New York v. Burger*, 482 U.S. 691, 699-700, 107 S.Ct. 2636, 96 L.Ed.2d 601 (1987). That doctrine permits legislatures to enact warrantless inspection provisions as part of a regulatory scheme, serving a substantial governmental interest, applicable to a heavily regulated industry. Vehicle Code Section 2805 does not meet this standard. The statute was not adopted as part of any regulatory scheme. The statute does not refer to or implement any regulatory scheme. Nor is the statute applicable to a particular industry or related industries. Rather, Section 2805 is an unprecedented grant of warrantless search authority across a remarkably broad spectrum of public and private enterprises.

Second, the court of appeal ruled that the subjective intentions of the officers who conducted the warrantless

search of Discount Muffler were irrelevant to the propriety of the search under the Fourth Amendment. (App. 13.) This ruling conflicts with this Court's decision in *Burger* and eschews this Court's recent opinion in *Whren v. United States*, ___ U.S. ___, 116 S.Ct. 1769, 1773-1774, 135 L.Ed.2d 89 (1996), which expressly recognized that in the context of an administrative inspection an officer's subjective motivation can invalidate the reasonableness of his conduct under the Fourth Amendment.

Both of these issues constitute decisions of "an important federal question in a way that conflicts with relevant decisions of this Court" which are therefore appropriate for certiorari pursuant to Supreme Court Rule 10(c).

## I. VEHICLE CODE SECTION 2805 IS AN UNCONSTITUTIONAL WARRANTLESS SEARCH PROVISION

The Fourth Amendment's prohibition against unreasonable searches and seizures applies to commercial premises as well as to private homes. *Burger*, 482 U.S. at 699. However, given the different and to some extent less intimate privacy interests implicated by a search of a business, together with the frequent necessity for government regulation of businesses, this Court has established less rigorous standards for administrative searches and has expressly recognized that "legislative schemes authorizing warrantless *administrative* searches of commercial property do not necessarily violate the Fourth Amendment." *Donovan v. Dewey*, 452 U.S. 594, 598, 101 S.Ct. 2534, 69 L.Ed.2d 262 (1981) [emphasis added.]. Thus,

there are "carefully defined classes of cases" arising in the context of pervasively regulated businesses in which "a history of government oversight" and inspection reduces the privacy expectations of the entrepreneur and in which warrantless administrative searches may be conducted pursuant to a valid regulatory scheme. *Burger,* 482 U.S. at 700-701; *Donovan,* 452 U.S. at 598-600.

However, even in the context of commercial enterprises, the Fourth Amendment warrant requirement remains the rule, not the exception. See *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313, 98 S.Ct. 1816, 56 L.Ed.2d 305 (1978). Where, as here, the police purport to conduct a warrantless search pursuant to statutory authorization, the threshold question is whether the particular enterprise that is the subject of the search qualifies as a pervasively regulated business so that warrantless administrative inspections of the premises are both justified and reasonable. See *Burger,* 482 U.S. at 701. But a finding that the targeted business is subject to pervasive government regulation does not end the inquiry. Instead, the court must next examine the relevant statutory provisions to determine whether they meet three criteria:

> First there must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made. . . . [¶] Second, the warrantless inspection must be 'necessary to further [the] regulatory scheme.' . . . [¶] Finally, 'the statute's inspections program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant.' In other words, the regulatory statute must perform two basic functions of a warrant: It must

> advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers. . . .

*Burger,* 482 U.S. at 702-703 [citations omitted].

The "closely regulated business" exception to the warrant requirement was first embraced by this Court in *Colonnade,* 397 U.S. 72, a case involving warrantless inspections of the liquor industry. Shortly thereafter, this Court again invoked the warrant exception in the context of inspections of business records of licensed firearm dealers. *United States v. Biswell,* 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972). More recently, this Court has found the nation's mining industry and New York's automobile junkyards to qualify as closely regulated industries justifying limited warrantless inspections. See *Burger,* 482 U.S. 691; *Donovan,* 452 U.S. 594. By contrast, in *Marshall,* 436 U.S. at 313-314, this Court declined to find that all businesses affecting interstate commerce were pervasively regulated despite Congress' enactment of a complex regulatory scheme in the Occupational Safety and Health Act of 1970.

### A. The Automobile Repair Industry Is Not Heavily Regulated In California.

Applying these standards to the instant case, it is clear that the automobile repair industry is not pervasively regulated within the meaning of *Colonnade* and its progeny. See *Long v. Van De Kamp,* 722 F. Supp. 1141

(C.D. Cal. 1991).[2] But see *Calvert*, 18 Cal.App.4th at 1831-1836. True, the Business and Professions Code contains provisions for the registration of automobile repair shops. See Business and Professions Code §§ 9984 et seq. But even California's courts have recognized that the existence of registration and licensing provisions are not the *sine qua non* for a finding of pervasive regulation:

> Arguably substantially all laws licensing businesses or professions were enacted to protect the public from dishonest and incompetent people engaging in licensed activity. Yet, all such licensed businesses or professions may not be considered pervasively regulated or the closely regulated business exception to the warrant requirement would no longer be the exception but the rule.

*Pinney v. Phillips*, 230 Cal.App.3d 157, 1585, 21 Cal.Rptr. 904 (1991). See also *Rush v. Obledo*, 756 F.2d 713, 722 (9th Cir. 1995) ("we cannot stress forcibly enough that there is no basis for applying the 'pervasively regulated business' exception to the warrant requirement merely because a business . . . requires a license."); *Long*, 722 F. Supp. at 1149 ("unless every industry in California is to be deemed pervasively regulated, the requirement of a license without more, cannot diminish the proprietor's

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[2] The decision in *Long* was later vacated by a panel in the Ninth Circuit Court of appeals on jurisdictional grounds. See *Long v. Van De Kamp*, 961 F.2d 151 (9th Cir. 1992). At the same time, however, the Ninth Circuit found the district court's "well-reasoned examination of the Fourth Amendment issue persuasive. . . . " *Id.* at 153. For the reasons set forth below, we believe the district court's reasoning was both compelling and correct.

constitutional guarantee against the unwarranted government intrusion into his private commercial premises.").

The automotive repair industry is subject to no greater regulation than electrical contractors and automobile dealers. See *Pinney*, 230 Cal.App.3d at 1538-1586; *Terry York Imports, Inc. v. Dept. of Motor Vehicles*, 197 Cal.App.3d 307, 319-320, 242 Cal.Rptr. 790 (1987). That was the precise conclusion reached by a federal district court in *Long*, 722 F. Supp. 1141. In the context of a constitutional challenge to the warrantless search provisions of Vehicle Code § 2805, the court in *Long* found the state's registration statute to be so "meager" that it "cannot be stretched to take the place of a pervasive regulatory scheme." *Id.* at 1149. Moreover, the avowed purpose of § 2805's search provisions – i.e., locating stolen vehicles – was divorced from *any* regulatory scheme applicable to automotive repair shops. *Id.* at 1146-1147. "Presumably it is the VIN number that would be helpful in tracing or locating stolen vehicles, not the repair shop's estimate on the installation of a new muffler." *Id.* at 1149-1150. Yet, the court noted in *Long*, § 2805 does not refer to, let alone enforce, any California law or regulation requiring repair shops to maintain "a record of VIN numbers or registration papers of vehicles serviced. . . . " *Id.* at 1149. Thus the court held that "§ 2805 cannot be upheld as directed at a pervasively regulated industry" and found that the statute's "only purpose is to uncover evidence of criminal violations. . . . " *Id.* at 1147, 1150.

In reaching these conclusions, the court in *Long* readily distinguished the warrantless inspection provisions that the Supreme Court analyzed in *Burger*. First

unlike the automobile dismantling industry, the automotive repair industry did not constitute a "new branch" of the long-regulated junkyard business. *Id.* at 1155.

> [In addition] the regulatory scheme addressed in *Burger* required a junkyard dealer to obtain an operating license, which could be refused if the applicant had previously been convicted of possession of stolen property, and to maintain a 'police book' recording the acquisition and disposition of motor vehicles and vehicle parts. [citations omitted.] Police officers and agents of the Department of Motor Vehicles were authorized by statute to examine the police book and to compare the entries in the book against the Vehicle Identification Numbers (VINs) of vehicles and vehicle parts found on the premises.

*Long,* 772 F. Supp. at 1145 [citations omitted]. By requiring that automobile dismantlers maintain a "police book" or lose their licenses, New York's regulatory scheme could be expected to deter the market in stolen vehicles (wholly apart from the state's penal approach to the same problem), by helping to insure that unscrupulous entrepreneurs were excluded from the automobile dismantling business. *Burger,* 482 U.S. at 715-716; *Long,* 772 F. Supp. at 1148. Moreover, New York's provision for the warrantless inspection of automobile dismantlers' records, which was enacted as part of the same regulatory scheme, furthered those same objectives by permitting police officers to inspect the dismantlers' "police books." *Burger,* 482 U.S. at 710. Thus, the search provisions had a regulatory purpose wholly apart from any effect they might have on criminal enforcement. *Id.* at 712-713.

By contrast, the court in *Long* recognized, the California Vehicle Code imposes no similar record-keeping function on automobile repair shops. Compare Vehicle Code § 11520 (auto dismantlers). As a consequence, officers in California who would invoke § 2805 have nothing administratively to "inspect" or to "look for" aside from evidence of criminal wrongdoing. *Long*, 722 F. Supp. at 1147. Thus, unlike the inspection provisions which the Supreme Court evaluated in *Burger*, § 2805 is merely "an expedient means of enforcing the Penal Code without observing the guarantees of the Fourth Amendment." *Id.* at 1147.[3]

### B. Section 2805 Is Not An Administrative Inspection Provision.

In *Burger*, the State of New York enacted an extensive statutory scheme establishing an administrative regime under the Commissioner of the Department of Motor Vehicles for the regulation of automobile dismantlers. *Burger*, 482 U.S. at 693, n. 1. The statutory scheme was expressly designed to address the State's significant and growing problem of automobile theft by ensuring that car thieves could not find a market in which to sell their ill-gotten goods. *Id.* at 708. Toward that end, the statute required that automobile dismantlers be licensed and "maintain a police book recording the acquisition and

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[3] We reiterate that although the Ninth Circuit Court of Appeals vacated the district court's decision in *Long* for want of jurisdiction, the Court of Appeals also opined that the lower court's analysis of the Fourth Amendment issues was "well-reasoned" and "persuasive." *Long*, 961 F.2d at 153.

disposition of motor vehicles and motor vehicle parts. . . . " *Id.* at 694, n. 1, and 704. The statute further provided that each auto dismantler must "display his registration number prominently at his place of business, on business documentation, and on vehicles and parts as they pass through his business." *Id.* at 704. To ensure compliance with these provisions, the statute required that, upon the request of a police officer, dismantlers make their "police book" and all vehicles or parts subject to the recordation requirement available for inspection. *Id.* at 704. A failure to comply with any of these provisions subjected the owner to a possible loss of license, civil fines and criminal penalties. *Id.* at 693, n. 1, and 704.

Relying on these and other regulatory provisions applicable to automobile dismantlers under New York law, the Supreme Court first held that auto dismantlers constitute a heavily regulated industry. *Burger,* 482 U.S. at 703-707. As the Court explained, the proper focus is whether "the regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes." *Id.* at 705, n. 16. Given the specific regulations applicable to automobile dismantlers requiring that they be licensed, that they comply with record-keeping provisions, and that they submit to inspection to ensure compliance, the Court ruled that the industry was heavily regulated within the meaning of *Colonnade.*

The Court then moved on to evaluate the three criteria that must be satisfied by a regulatory scheme in order

for a provision for warrantless inspections to be reasonable – i.e., whether the regulatory scheme serves a substantial government interest; whether the warrantless search provision is necessary to further the regulatory scheme; and whether the statutory inspection provision is sufficiently specific to constitute an adequate substitute for a warrant. *Burger,* 482 U.S. at 708-712. The Court found that the first criterion was satisfied because New York State had a substantial interest in regulating the automobile dismantling industry due to the increasing problem of vehicle theft, which the legislature found to be associated with the industry. *Id.* at 708. The second criterion was met because the State legislature rationally concluded that "it will reduce car theft by regulations that prevent automobile junkyards from becoming markets for stolen vehicles and that help trace the origin and destination of vehicle parts . . . " and because surprise inspections are necessary to ensure compliance. *Id.* at 709-710. Finally, the third criterion was satisfied because the regulatory statute informed the operators of automobile dismantling businesses that their premises would be subject to a periodic inspection of the police book and of vehicles and vehicle parts subject to the recordation requirement. *Id.* at 710-712.

Here, in stark contrast to *Burger,* the State of California has enacted no regulatory scheme, applicable to automobile repair shops, which is designed to prevent that industry from becoming a market for stolen vehicles and parts. Unlike *Burger,* California has no requirement that automobile repair owners maintain records of vehicles and parts, for the purpose of deterring the purchase of

stolen items.[4] Nor does California require that auto repair shops prominently display their registration numbers on vehicles and parts that move through the premises. Nor are there any other regulatory provisions, directed toward the prevention of vehicle thefts, which are applicable to repair shops. Compare *Burger*, 482 U.S. at 693, 704.

Vehicle Code § 2805 stands alone, entirely divorced from any regulatory scheme. The warrantless search provision was not enacted as part of any regulatory scheme, does not purport to enforce or ensure compliance with any specific regulations, and has never been incorporated into any regulatory body of law. Compare *Burger*, at 693-694. No regulatory scheme, applicable to auto repair shops, mandates compliance with a § 2805 inspection as a licensing condition or imposes penalties for the failure to comply. Compare *Burger* at 693-694. Conversely, § 2805 does not authorize the inspection of any business records

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[4] This is not to say that there are no regulatory schemes applicable to automobile repair shops in California. There are in fact licensing requirements which are designed to ensure that auto repair shops are run by reputable people and other regulatory provisions which are expressly intended to prevent consumer fraud, primarily by the prevention of the secretive use of used or defective parts. See Vehicle Code § 12000-12003, Business & Professions Code § 9882; Cal. Code Regs., Tit. 16 § 3350. See also *Calvert*, 18 Cal.App.4th at 1832-1834. But none of these provisions addresses the problem of stolen vehicles and parts flowing through repair shops, and none are subject to enforcement through Vehicle Code § 2805 inspections, which authorizes an inspection only of vehicles, vehicle parts, and vehicle title or registration. § 2805(a).

required to be maintained by an auto repair shop. Compare *Burger*, at 703-704. Indeed, the wary automobile repair shop owner will search in vain through the entire panoply of administrative provisions in the Business & Professions Code, the regulations adopted thereunder, and the Vehicle Code to locate any requirement that he maintain a record of the identification numbers for vehicles and parts flowing through his premises, as part of a program to deter the purchase of stolen parts. There is no such program; and, as a consequence, § 2805 enforces no such program.

Nor does § 2805 specifically apply to automobile repair shops and related industries. Compare *Burger*, 482 U.S. at 705, n. 16, and 711. Instead, § 2805's inspection provisions apply to a broad spectrum of public activities and locations, including cars on the highways or in garages, parking lots, new or used car lots and numerous other locations not logically associated with the same types of concerns about stolen vehicles and parts that might arise in the context of repair shops. Thus, Vehicle Code § 2805 is not an enforcement mechanism for a regulatory scheme in the automobile repair industry. It is instead, and however well intentioned, a broad grant of warrantless search authority to police officers. As such, it is patently and irretrievably unconstitutional.

It was the failure to address this fundamental point which undermines the analysis of the court of appeal. See also *Calvert*, 18 Cal.App.4th at 1832-1836. Vehicle Code § 2805 simply is not a regulatory enforcement mechanism. Rather, the statute is carte blanche for police to inspect vehicles, vehicle parts and ownership documentation virtually wherever and whenever they desire. This

conclusion is underscored not only by the statute's breadth, but also by its express objective – i.e. "locating stolen vehicles." That goal, however laudable, does not include enforcing compliance with any administrative regulation.[5] In short, there is no regulatory scheme here, just a warrantless search provision. As such, § 2805 fails to pass muster because it is not necessary to further any regulatory scheme and is not administrative. *Burger*, 482 U.S. at 708-710, 717.

## II. THE FOURTH AMENDMENT CANNOT COUNTENANCE POLICE OFFICERS' RELIANCE ON AN ADMINISTRATIVE INSPECTION PROVISION AS A PRETEXT TO CONDUCT A WARRANTLESS CRIMINAL SEARCH

The starting point for this Court's analysis in *Burger* was the proposition that the officers' search in that case was indeed administratively motivated:

> There is . . . no reason to believe that the instant inspection was actually a 'pretext' for obtaining evidence of respondent's violation of the Penal laws. It is undisputed that the inspection was

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[5] In reaching a contrary conclusion, the court of appeal improperly relied on statutes and regulations which, though imposing some record keeping responsibilities on automobile repair shops, were enacted *after* § 2805 became law, operate completely independent of and include no reference to § 2805, and do not have as their object the prevention of a market for stolen vehicles and vehicle parts. (App. 9.) Instead, the provisions relied upon by the court of appeal are consumer protection regulations, entirely divorced from the purpose which supposedly informs § 2805.

> made solely pursuant to the administrative scheme.

*Burger,* 482 U.S. at 691, n. 27. The courts have long recognized that an administrative or regulatory search is one "conducted as part of a general regulatory scheme in furtherance of an administrative purpose, rather than as part of a criminal investigation to secure evidence of crime." *Estes v. Rowland,* 14 Cal.App.4th 508, 522, 17 Cal.Rptr. 901 (1993), quoting *United States v. Davis,* 482 F.2d 893, 908 (9th Cir. 1973). Indeed, this Court has always adhered to the principle that if "the primary object of a search is to gather evidence of criminal activity, a criminal search warrant [must] be obtained. . . . " *Michigan v. Clifford,* 464 U.S. 287, 294, 104 S.Ct. 641, 78 L.Ed.2d 477 (1984). See also *Michigan v. Tyler,* 436 U.S. 499, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978). As the court stated in *Long,* "[a]dministrative inspections schemes are not meant to trump the constitutional guarantees applicable to criminal investigations." *Long,* 772 F. Supp. at 1145 [citations omitted].

In *Burger,* the officers who executed the inspection were members of a police division that conducted such inspections on a regular basis, about 5 to 10 times a week. *Burger,* 482 U.S. at 694. The record established that the officers selected a particular business for inspection from a list of auto dismantling businesses compiled by another division of the police department. *Id.* at 694. It was "undisputed that the inspection was made solely pursuant to the administrative scheme . . . " and this Court emphasized that the fact that the search was not a "pretext" for a criminal search permitted the appellate courts to address the question of the warrantless inspection

provision's constitutionality. *Id.* at 716, n.27. In fact, this Court noted with approval that the New York Court of Appeals had refused to address the constitutionality of the auto dismantler's inspection scheme in a previous case because "the police officers in that case were not conducting an administrative inspection, but were acting on the basis of recently discovered evidence that criminal activity was taking place at the automobile salvage yard." *Id.* at 697, n.7, citing *People v. Pace,* 101 App.Div.2d 336, 475 N.Y.S.2d 443 (1984), *aff'd,* 65 N.Y.S.2d 684, 491 N.Y.S.2d 618, 481 N.E.2d 250 (1985). Thus, even as this Court recognized that administrative regulatory schemes are not invalid merely because they address the same problems as penal laws and that an administrative inspection scheme is not rendered unconstitutional merely because an officer may discover evidence of crime in the course of an enforcement inspection, this Court insisted that the inspection itself must "truly" be administrative. *Burger,* 482 U.S. at 716, n.27.

Here, as in *Pace,* the officers attempted to justify their warrantless criminal search by reference to a statutory inspection procedure. Indeed, the record in this case amply demonstrates that the impetus for the inspection was a criminal investigation, and the trial court found that the inspection was in fact a pretext for a "criminal search." (App. 22-23.) But as this Court recognized, the police must establish that their inspection was in fact administrative and not criminal, as a prerequisite to reliance on an administrative search procedure. *Burger,* 482 U.S. at 716, n.27. See also *Pace,* 475 N.Y.S.2d at 446; *People v. Burger,* 67 N.Y.2d 338, 342-343, 502 N.Y.S.2d 702, 493 N.E.2d 926 (1986). This rule is consistent with the

Court's long standing recognition that an administrative search is one that is "conducted as part of a general regulatory scheme in furtherance of an administrative purpose, rather than as part of a criminal investigation to secure evidence of crime." *Estes*, 14 Cal.App.4th at 522. By contrast, where as here the "primary object of the search is to gather evidence of criminal activity, a criminal search warrant [must] be obtained. . . . " *Clifford*, 464 U.S. at 294.[6]

Very recently, no less a constitutional authority than Justice Scalia re-affirmed that an officer may not use an administrative inspection provision to evade the Fourth Amendment's requirements for a criminal search warrant. In *Whren v. United States*, 116 S.Ct. 1769, this Court confronted the issue whether a traffic stop that was justified by probable cause was nevertheless unreasonable because the officer's subjective intent was to use the stop as a pretext for investigating other suspected criminal activity. Given the fact that, regardless of the officer's subjective intentions, his conduct was objectively justified by probable cause, this Court held that the officer's "pretext" did not implicate the Fourth Amendment. However, in so ruling, this Court expressly distinguished the significance of an officer's subjective intent in an administrative search context. As Justice Scalia explained:

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[6] We emphasize that, for the reasons previously stated, there can be no administrative inspection pursuant to Vehicle Code § 2805. That section simply is not part of a "general regulatory scheme" and has no "administrative purpose." But here, in addition to the defects in the statute, the record establishes that the officers' motivation was in fact a criminal investigation.

> [O]nly an undiscerning reader would regard these cases as endorsing the principle that ulterior motives can validate police conduct that is justifiable on the basis of probable cause to believe that a violation of the law has occurred. In each case we were addressing the validity of a search conducted in the absence of probable cause. Our quoted statements simply explain that *the exemption from the need for probable cause (and warrant), which is accorded to searches made for the purpose of inventory or administrative regulation, is not accorded to searches that are not made for these purposes.*

*Id.* at 1773. (Italics in original, citations omitted, underline added). The Court went on to emphasize that administrative inspections and inventory searches are two contexts in which the Court has held that "an officer's motive [may] invalidate[ ] objectively reasonable behavior under the Fourth Amendment. . . . " *Id.* at 1774.

*Whren* reaffirmed the principle which was already clear from the Court's decision in *Burger:* Because an administrative inspection is one that is undertaken for the purpose of "enforcing a pervasive regulatory scheme" (116 S.Ct. at 1773, n. 2), an inspection that is undertaken for any other purpose is, by definition, not an administrative inspection and cannot lawfully be justified as such. Or, to paraphrase Justice Scalia, the exemption from probable cause and warrant which is accorded to administrative search "is not accorded to searches that are *not* made for [that purpose]." *Id.* at 1773 [emphasis in original].

Here, there can be no doubt that the sole motivation for the officers' intrusion into the premises of Discount Muffler on March 3, 1993 arose from their desire to collect

evidence of criminal violations, and the trial court so found.[7] The evidence established that the officers in this case had received information of criminal violations at Discount Mufflers and had conducted a fruitless criminal investigation over several months before turning to the subterfuge of a "business inspection." Although both Van Koll and Nannery knew that such inspections are required to be "arbitrary" or to occur "randomly" (RT 26, 111), the search of Discount Muffler was neither. Instead, as the trial court expressly found, the so-called inspection was a "pretext" for a criminal search, as demonstrated by the manner and timing of its execution. (App. 22-23.) Contrary to the trial court's ruling, the Supreme Court's precedents do not require, let alone permit, such a pretext to stand. Instead, where as here the primary object of the search is a criminal investigation, the officers must obtain a criminal search warrant. *Clifford*, 464 U.S. at 294. Because the officers in this case proceeded without a warrant, the trial court erred by denying the motion to suppress and the court of appeal's judgment affirming Young's conviction cannot be permitted to stand.

## CONCLUSION

For the reasons stated, Petitioner's petition for certiorari should be granted, the judgment of the California

[7] The Court of Appeal disagreed with the trial court's finding but failed to accord any deference to that finding or to evaluate it under the "clearly erroneous" standard. See *Taylor*, 6 Cal.App.4th at 1092-1093.

court of Appeal reversed, and the case remanded for further proceedings.

DATED: February 20, 1997

Respectfully submitted,

COOPER, ARGUEDAS & CASSMAN

TED W. CASSMAN

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

| | |
|---|---|
| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>NORMAN HAI YOUNG,<br>Defendant and Appellant. | A067922<br>(San Francisco County Super. Ct. No. 153317)<br>(Filed Aug. 6, 1996) |

Norman Hai Young appeals from a judgment and order of probation entered after he pleaded guilty to 11 counts of possession of illegal firearms. He contends that Vehicle Code section 2805 (hereinafter Section 2805), the statute authorizing the warrantless administrative search which led to the seizure of the illegal firearms, is unconstitutional; the search was not in compliance with Section 2805; and his purported consent to the search of his business premises and residences was involuntary. We disagree, and affirm the judgment.

## Factual and Procedural Background

In October and November 1992, the San Francisco police obtained evidence and received allegations from

neighboring business indicating that the Discount Muffler shop on Folsom Street in San Francisco was possibly involved in facilitating automobile theft through the "stripping" of stolen cars, the exchange of stolen parts between vehicles, and the removal of vehicle identification numbers. In December 1992, San Francisco Police Inspector Richard John Van Koll opened a criminal investigation of Discount Muffler. Van Koll conducted surveillance of Discount Muffler on two separate occasions, but could find no evidence of any criminal activities on the premises.

On March 3, 1993, at approximately 5:15 p.m., Inspector Van Koll went to the Discount Muffler shop with five other police officers to conduct an administrative inspection pursuant to Section 2805.[1] His purpose was to

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[1] Section 2805 provides in pertinent part: "(a) For the purpose of locating stolen vehicles, . . . a member of a city police department or county sheriff's office whose primary responsibility is to conduct vehicle theft investigations, may inspect any vehicle of a type required to be registered under this code, or any identifiable vehicle component thereof, on a highway or in any public garage, *repair shop*, terminal, parking lot, new or used car lot, automobile dismantler's lot, vehicle shredding facility, vehicle leasing or rental lot, vehicle equipment rental yard, vehicle salvage pool, or other similar establishment, . . . and may inspect the title or registration of vehicles, in order to establish the rightful ownership or possession of the vehicle or identifiable vehicle component.

"As used in this subdivision, 'identifiable vehicle component' means any component which can be distinguished from other similar components by a serial number or other unique distinguishing number, sign, or symbol.

determine whether the business was legitimate, to ascertain whether any vehicles or vehicle components on the premises were stolen or dismantled, and "to close [his] case."[2] Van Koll brought the other officers in order to expedite the inspection and minimize disruption of the on-going business, which was located in a large two-story building with approximately 10,000 square feet of space. The officers, wearing San Francisco Police Department jackets, split up and entered the shop through four separate doors. They did not secure the entrances or bar anyone from leaving the facility.

Inspector Van Koll presented his identification as a police officer and asked to speak to the owner. When appellant identified himself as the owner, Van Koll told him the purpose of the inspection and gave him a copy of Section 2805. Van Koll then told appellant to continue conducting his business normally, and assured him that the officers would try to minimize any disruption. Pursuant to Business and Professions Code section 9884.11,[3]

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"....

"(c) Whenever possible, inspections conducted pursuant to subdivision (a) . . . shall be conducted at a time and in a manner so as to minimize any interference with, or delay of, business operations." (Italics added.)

[2] Inspector Koll was joined by Inspectors Nannery, Chignell, Logan and Totah, and Lieutenant Camara.

[3] Business and Professions Code section 9884.11 provides: "Each automotive repair dealer shall maintain any records that are required by regulations adopted to carry out this chapter. Those records shall be open for reasonable inspection by the chief or other law enforcement officials. All of those records shall be maintained for at least three years." This statute is part of Chapter 20.3 of Division 3 of the Business and Professions

Van Koll asked appellant to produce records and work orders for all the vehicles on the premises. Appellant was cooperative and Van Koll found that all the paperwork was in order. Meanwhile, Inspector Nannery walked upstairs to inspect vehicles and vehicle parts and components that might be there. Nannery found a trunk lid, fenders, manifolds and wheels. Nannery thought it unusual to find disassembled vehicle body parts in a facility for repairing mufflers and brakes. Nannery went back downstairs to look for more vehicle body parts, sheet metal, engines or transmissions that might be unusual in a muffler and brake repair facility, but found nothing out of the ordinary. During the investigation, business continued as usual in the shop, and customers and employees were free to come and go.

Inspector Van Koll observed appellant's business permit from the Bureau of Automotive Repair framed above his office door. Van Koll noticed that the permit had

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Code, entitled the Automotive Repair Act. (Bus. & Prof. Code, § 9880 et seq.)

California Code of Regulations, title 16, section 3358, adopted pursuant to this provision, states: "Each automotive repair dealer shall maintain legible copies of the following records for not less than three years:

"(a) All invoices relating to automotive repair including invoices received from other sources for parts and/or labor.

"(b) All written estimates pertaining to work performed.

"(c) All work orders and/or contracts for repairs, parts and labor. All such records shall be open for reasonable inspection and/or reproduction by the [Bureau of Automotive Repair] or other law enforcement officials during normal business hours."

expired, and pointed this out to appellant. Appellant responded that he had an updated permit in the drawer of his desk in his business office, and proceeded to open the door to his office. At the same time, Inspector Nannery asked appellant if he could check inside the office for any other vehicle parts or components. Appellant directed Van Koll and Nannery into his office.

As appellant walked toward his desk to retrieve the permit, Inspector Nannery observed a knife on the desk. Concerned for officer safety, Nannery told appellant to move away from the desk and to sit down on a chair, and asked appellant if there were any more weapons or any guns in the office. Appellant said there was a gun underneath a newspaper on the seat next to him. Van Koll removed the newspaper and found a fully loaded Charter Arms .38 caliber revolver. Nannery asked if there were any more weapons in the office. Appellant directed the officers to an unlocked safe on top of the desk. Inside the safe, Van Koll found three guns: an Inter Arms .20 millimeter, a .380 Walther semiautomatic, and a North American Derringer, all fully loaded. Asked if there were any more weapons, appellant said no. Inspector Nannery looked around the room to see if there were any other weapons within appellant's reach. In doing so, he saw a plastic bag of what appeared to be a pound of marijuana.[4] Appellant exclaimed, "I'm just holding it for someone."

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[4] Inspector Van Koll testified that the plastic bag was inside a brown bag underneath the desk. Inspector Nannery testified that the plastic bag containing the marijuana "was not covered up in a brown paper bag."

The officers then placed appellant under arrest for suspected possession of marijuana for sale, and handcuffed his hands behind his back.

At this point, the nature and purpose of the officers' investigation changed from administrative to criminal. Appellant was advised of and waived his *Miranda* rights.[5] In a tape-recorded interview, he told the officers he had given $800 to one of his employees to purchase the marijuana because the employee needed it for medicinal purposes, and he was keeping the marijuana in his office for the employee to use. Appellant gave the officers permission to search the rest of his office. At this point, appellant told them that there was an illegal weapon concealed in a brown bag underneath a lap top computer. Inspector Van Koll found a Mac Cobray .10 millimeter gun with no visible serial number in the location to which appellant directed him. Appellant told the officers he had loaned an employee $500 to purchase the gun "off the street," and was keeping the gun as collateral pending return of his loan. Appellant appeared nervous during questioning and he told the officers that he was "scared."

In their search of the office, the Inspectors Van Koll and Nannery found "large amounts" of cash and ammunition, apparent diamonds, several large Bowie knives, and a bullet-proof vest. The officers asked appellant for permission to search his residence. Appellant readily agreed, saying "[O]h, sure, no problem," or words to that effect. At about 6:45 p.m., Inspector Nannery and another officer drove appellant to his residence in San Francisco.

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[5] *Miranda v. Arizona* (1966) 384 U.S. 436.

After unlocking his front door for the officers, appellant directed them to three locations, two of them locked, where they found a fully automatic machine gun and about 30 other weapons. The officers did not search areas in the house where appellant said there were no weapons.

Appellant told the officers he had a second residence in Hillsborough, where he also had guns. At approximately 8:30 p.m., the officers drove appellant to the Hillsborough residence. Again opening his home for the officers, appellant directed them to two safes in the guest house, where they found a .50 caliber gun and approximately 20 other weapons. The officers found about 1,000 rounds of ammunition, including numerous rounds for the .50 caliber weapon. The officers did not search appellant's residence, but simply went to the locations where appellant directed them to find weapons. In all, the officers seized approximately 93 weapons.

On November 16, 1993, the San Francisco Grand Jury returned an indictment charging appellant with one count of possessing a machine gun (Pen. Code, § 12220),[6] one count of possessing a firearm with an altered or obliterated serial number (§ 12090), nine counts of possessing an assault weapon (§ 12280, subd. (b)), and one count of possession of marijuana for sale (Health & Saf. Code, § 11359). Appellant pleaded not guilty. The trial court denied appellant's section 1538.5 motion to suppress the evidence, and granted his subsequent motion to

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[6] Unless otherwise indicated, all further statutory references are to the Penal Code.

withdraw his plea of not guilty. Appellant pleaded guilty to the 11 weapons charges, and the single charge of possession of marijuana for sale was dismissed. The trial court sentenced him to three years of felony probation. This appeal followed pursuant to the trial court's issuance of a certificate of probable cause.

### Constitutionality of Section 2805

As indicated, the officers in this case initially based their investigatory search of appellant's business on the provisions of Section 2805. Among other things, this statute authorizes inspections of automobile repair shops to examine the title or registration of vehicles and vehicle components, for the purposes of establishing rightful ownership or possession and locating stolen vehicles. Appellant first contends that the administrative search provisions of Section 2805 are unconstitutional as applied to automobile repair shops. The contention is without merit.[7]

Because commercial property owners have lower expectations of privacy in their places of business than do individuals in their private residences, the Legislature has comparatively greater latitude to enact statutes and regulations providing for warrantless administrative inspections and searches of commercial property. (*New York v. Burger* (1987) 482 U.S. 691, 699-700; *Donovan v.*

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[7] We note that this same contention was recently addressed and rejected in *People v. Calvert* (1993) 18 Cal.App.4th 1820, 1825-1836. We agree with the analysis and conclusions in that case.

*Dewey* (1981) 452 U.S. 594, 598-599.) In order to pass constitutional muster, statutes and regulations permitting warrantless inspections must fulfill a number of requirements. First, they can apply only to "closely regulated" industries with a history of government oversight. Second, there must be a substantial government interest underlying the regulatory scheme authorizing the inspection. Third, the warrantless inspections must be necessary to further the regulatory scheme. Fourth, the statutory inspection program must provide a constitutionally adequate substitute for a warrant that advises the owner that the search is made pursuant to law and defines a limited scope of discretion for the inspecting officers. (*New York v. Burger, supra,* 482 U.S. at pp. 700-703.)

Section 2805 meets these constitutional tests. The automobile repair business is a closely regulated industry governed by extensive, detailed, statutory and regulatory provisions in the Business and Professions Code, the Vehicle Code, and the Code of Regulations. (Bus. & Prof. Code, § 9880 et seq.; Veh. Code, §§ 10653, 12000-12003; Cal. Code Regs., tit. 16, § 3350 et seq.) These statutes and regulations require extensive recordkeeping and strict accountability for replacement of vehicle parts, and mandate that both repair facilities and business-related paper work be open and available for reasonable on-site inspection by law enforcement officials. (Bus. & Prof. Code, §§ 9884.11, 9889.39; Cal. Code Regs., tit. 16, § 3358; *People v. Calvert, supra,* 18 Cal.App.4th at pp. 1832-1836.) There is a substantial and legitimate government interest in the prevention of automobile theft. The warrantless administrative inspection provisions of Section 2805 are necessary to further the public policy purpose of deterring

automobile theft because of the difficulty of detecting stolen vehicles and vehicle components as they pass quickly and undetected through repair shops. (*New York v. Burger, supra,* 482 U.S. at pp. 708-710; *Donovan v. Dewey, supra,* 452 U.S. at p. 600; *United States v. Biswell* (1972) 406 U.S. 311, 316.) Finally, the administrative inspection procedure set out in Section 2805 provides a constitutionally adequate substitute for a warrant, by putting automobile repair shop owners on statutory notice that their premises may be inspected at any time without notice for the specific limited purpose of finding evidence of stolen vehicles and vehicle components. (*Donovan v. Dewey, supra,* 452 U.S. at p. 600.)

The constitutionality of Section 2805 is not affected by the fact that its purpose in establishing a procedure for warrantless administrative inspection of automobile repair shops overlaps the criminal purposes of the Penal Code. States may address significant societal problems such as widespread vehicle theft through both administrative schemes and penal sanctions. For this reason, an administrative inspection such as Section 2805 may properly respond simultaneously to the usual purposes of commercial regulation and the additional aim of enforcing criminal sanctions. (*New York v. Burger, supra,* 482 U.S. at pp. 712-714; *People v. Calvert, supra,* 18 Cal.App.4th at pp. 1835-1836.)

### "Pretextual" Nature of Search

Appellant contends that the officer's administrative inspection under Section 2805 was an unlawful pretext to conduct a warrantless criminal search. He cites the trial

court's statement that the administrative inspection was "pretextual and . . . really a criminal search," although "still . . . valid" under Section 2805 and governing case authority. We disagree both with appellant and with the trial court's characterization of the administrative inspection in this case.

The undisputed evidence shows that the officers went to appellant's shop for the sole specific purpose of locating stolen vehicles, through the inspection of vehicles and vehicle components found on the premises. This is precisely what they were permitted to do under the express terms of Section 2805. The record is clear that they never searched for drugs, and did not look for weapons until appellant revealed that he had a number of weapons in his office. The officers only found the marijuana when they saw it in plain view while looking for weapons, as they were permitted to do to protect their own safety. So long as the officers had an objectively proper justification for the search, it is irrelevant whether or not they may have subjectively harbored any hope to find evidence of other crimes. (*Maryland v. Macon* (1985) 472 U.S. 463, 470-471; *People v. Calvert, supra,* 18 Cal.App.4th at p. 1831; *People v. Uribe* (1993) 12 Cal.App.4th 1432, 1436-1439.)

At oral argument, counsel for appellant suggested that this court should examine the subjective, pretextual motivation of the officers in undertaking the administrative inspection under Section 2805, in order to prevent the statute from becoming a vehicle for granting law enforcement officers unlimited license for conducting warrantless searches without probable cause. To support this argument, he cited the recent opinion of the United States

Supreme Court in *Whren v. U.S.* (1996) ___ U.S. ___ [116 S.Ct. 1769]. Nothing in that opinion requires us to invalidate the investigation and subsequent search in this case. *Whren* reaffirmed the established principle that the constitutional reasonableness of traffic stops does not depend on the actual subjective motivation of the individual officers involved. The Supreme Court distinguished traffic stops from inventory and administrative searches on the grounds that the latter may be conducted *without* probable cause. (*Whren v. U.S., supra,* ___ U.S. ___, ___ [116 S.Ct. at pp. 1773-1774].)

The Supreme Court's statements in *Whren* about administrative investigations were dicta, and not authority for the principle asserted by appellant in this case. In our opinion, the administrative inspection before us was analogous to other inspections the United States Supreme Court has upheld when challenged under the Fourth Amendment as pretextual searches. Thus, in *United States v. Villamonte-Marquez* (1983) 462 U.S. 579, the Court upheld a warrantless customs inspection of a vessel despite the fact that the officers were acting on the basis of an informant's tip that the ship was carrying marijuana, and were accompanied by a state police officer. The officers' subjective intent or motivation was irrelevant to the search, which was otherwise objectively justifiable as a customs inspection. (*Id.* at p. 584, fn. 3.)

If anything, the administrative search in the instant case is less susceptible to challenge as a "pretextual" search than the customs search at issue in *Villamonte-Marquez*. Here, the most the officers suspected was that there might be stolen vehicle parts on the premises. Their *only* purpose in conducting the administrative search was

the legitimate one of looking for stolen vehicles or vehicle parts. They had no suspicion that there might be other contraband on the premises, and no intention of looking for drugs or illegal weapons. In short, the record establishes that the administrative search in this case was *not* a pretext for a criminal search.

We decline to hold that courts must delve into the subjective motivations of officers performing otherwise objectively reasonable and justifiable administrative inspections under Section 2805. An objective test is consistent with the goals of Section 2805, which was enacted in order to help prevent vehicle theft and the use of stolen vehicle parts. Thus, the administrative inspection of appellant's shop "[f]or the purpose of locating stolen vehicles" under Section 2805 was not invalidated by the fact that the officers in this case may have suspected that they might actually find stolen automobile parts on the premises.

### Compliance of Search with Statutory Provisions

Appellant argues that the officers in this case conducted an "unbridled" general criminal search beyond the scope of any administrative investigation as provided under Section 2805. We do not agree.

The record shows that the officers conducted a limited administrative inspection of Discount Mufflers. It did not become a criminal search until they found drugs and a substantial number of weapons in appellant's office, all of which occurred as a result of their simple observation of objects in plain view and appellant's own statements. It is undisputed that the officers did not intend to look

for drugs or weapons when they decided to make an administrative inspection of the premises. They commenced the inspection late in the day, but still during normal business hours. The number of officers involved was appropriate to the relatively large size of the building to be inspected. Once inside the shop, the inspection proceeded normally in conformance with Section 2805, Business and Professions Code section 9884.11, California Code of Regulations, title 16, section 3358, and the statutory provisions for automotive repair facility certification (Bus. & Prof. Code, §§ 9889.30 et seq.) The officers did not seal the premises or interfere with the normal transaction of business in any way. Customers and employees were free to come and go throughout the investigation. As they were authorized to do under the applicable statutes and regulations, the officers asked to see vehicles, vehicle components, business certification and licenses, and written records and invoices relating to automotive repair.

With regard to the officers' entry into appellant's office, the record shows that Nannery asked appellant to open the door so he could check for vehicle components. This was a legitimate purpose under Section 2805. Moreover, the evidence also indicates that appellant himself invited the officers into his office to show them his updated Board of Automotive Repair license, which he kept in the desk in his office. In either case, the officers' entry into appellant's office was proper. Once inside the office, Inspector Nannery saw a large knife in plain view on appellant's desk. For reasons of officer safety, Nannery legitimately told appellant to step away from the weapon, and asked if he had any other weapons. (*Maryland v. Macon, supra,* 472 U.S. at p. 471.) Appellant then directed

the officers to five guns, at least one of which was illegal. In the course of checking to see if there were any other weapons within reach, Nannery saw the bag of marijuana in plain view, and legitimately seized it. (*People v. Webster* (1991) 54 Cal.3d 411, 431.) It was not until that point that the administrative investigation changed its focus and became a criminal one.

In short, the evidence in the record, viewed in the light most favorable to the trial court's ruling, shows that the entire investigation was conducted in accordance with Section 2805 and other regulatory provisions governing such an administrative investigation of an automotive repair facility. The evidence at issue in this case was found either because it was in plain view, or because appellant himself directed the officers to it.

### Voluntariness of Consent

Finally, appellant contends that his consent to search his business premises and his residences was involuntary. We disagree.

Whether consent has been voluntarily given is a question of fact to be determined in the first instance by the trier of fact. The standard is an objective one: whether the facts available to the officer at the moment warranted a reasonable belief that a valid consent has been given. On appeal, all presumptions favor the trial court's exercise of its power to make inferences and resolve factual discrepancies. We must uphold the trial court's factual findings, whether express or implied, if supported by substantial evidence. (*Illinois v. Rodriguez* (1990) 497 U.S. 177, 185-188; *People v. Ratliff* (1986) 41 Cal.3d 675, 686.)

In this case, the trial court found that appellant's consent to search was voluntary. There was substantial evidence to support this factual finding. At the outset, Inspector Van Koll introduced himself, told appellant the purpose of the investigation, and gave him a copy of the relevant statutory provision. Appellant was cooperative and gave the officer all the relevant paper work. He therefore consented to the initial administrative search. (*People v. Woolsey* (1979) 90 Cal.App.3d 994, 1004.) When Van Koll commented that the displayed copy of appellant's Board of Automotive Repair permit had expired, appellant offered to show the officers the updated permit inside his office. His conduct in this regard manifests consent to enter his office. (*People v. James* (1977) 19 Cal.3d 99, 106, 113; *People v. Timms* (1986) 179 Cal.App.3d 86, 90; *People v. Linke* (1968) 265 Cal.App.2d 297, 313.)

Once inside the office, appellant responded to the officers' questions about the knife on his desk by telling them about the gun underneath a newspaper and the three guns in the safe. After they saw marijuana under his desk, appellant gave the officers consent to search his entire office. He waived his *Miranda* rights and consented to an interview. At the end of the interview, appellant gave the officers consent to search his residences for guns, accompanied them there, and opened the doors for them. The officers in fact did not make a general search of appellant's two homes, but simply accompanied him there and looked for weapons only in the specific places to which he directed them. This evidence supports the conclusion that appellant voluntarily consented to the

officers' search of his office and his two residences. (*People v. Linke, supra,* 265 Cal.App.2d at p. 313; *People v. Cove* (1964) 228 Cal.App.2d 466, 470.)

On this record, we conclude that there was substantial evidence to support the trial court's finding of voluntary consent.

DISPOSITION

The judgment is affirmed.

McGuiness, J.*

We concur:

Corrigan, Acting P. J.

Parrilli, J.

A067922, *People v. Young*

* Judge of the Alameda Superior Court sitting under assignment by the Chairperson of the Judicial Council.

First Appellate District, Division Three,
No. A067922 S056104

IN THE SUPREME COURT OF CALIFORNIA

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THE PEOPLE, Respondent

v.

(Filed
Nov. 26, 1996)

NORMAN HAI YOUNG, Appellant

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Appellant's petition for review DENIED.
The request for an order directing publication of the opinion is denied.

/s/ GEORGE
Chief Justice

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IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

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THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF AND RESPONDENT,

VS.

NORMAN H. YOUNG,

DEFENDANT AND APPELLANT.

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REPORTER'S TRANSCRIPT

ON APPEAL FROM THE JUDGMENT OF THE
SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE
CITY AND COUNTY OF SAN FRANCISCO

HONORABLE JACK BERMAN, JUDGE

APPEARANCES:

HON. DANIEL E. LUNGREN
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA
455 GOLDEN GATE AVENUE, SUITE 6200
SAN FRANCISCO, CA 94102

ATTORNEY FOR APPELLANT

REPORTED BY: CONNIE MIHOS, CSR 7391
OFFICIAL COURT REPORTER

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IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA,

IN AND FOR THE CITY AND
COUNTY OF SAN FRANCISCO

BEFORE THE HONORABLE JACK BERMAN, JUDGE

DEPARTMENT NO. 25

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| THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VS. NORMAN H. YOUNG, DEFENDANT. | NO. 153317 - HEARING RE 1538.5 CHANGE OF PLEA JUDGMENT & SENTENCE (Filed Mar. 15, 1995) |

REPORTER'S TRANSCRIPT
OCTOBER 24, 1994

APPEARANCES:

FOR THE PEOPLE: HON. ARLO E. SMITH
DISTRICT ATTORNEY
BY: S. JANKOWITZ
ASST. DISTRICT ATTORNEY

FOR THE DEFENDANT: P. COOPER
ATTORNEY AT LAW

REPORTED BY: CONNIE MIHOS, CSR 7391
OFFICIAL COURT REPORTER

[p. 1] OCTOBER 24, 1994 A.M. SESSION

PROCEEDINGS

THE COURT: LET'S CALL NORMAN YOUNG, 153317.

MS. COOPER: PENNY COOPER FOR MR. YOUNG. HE'S PRESENT.

MR. JANKOWITZ: STEWARD JANKOWITZ.

THE COURT: ANYTHING FURTHER TO BE ADDED IN THIS MATTER?

MS. COOPER: NO.

THE COURT: I'M GOING TO MAKE CERTAIN FINDINGS. I'VE GOT CERTAIN QUESTIONS, ACTUALLY. LET ME SEE HOW YOU ANSWER THEM.

HOW DO YOU GET AROUND U.S. V. BERGER?

MS. COOPER: CAN I HAVE A MOMENT, YOUR HONOR?

THE COURT: YOU CAN HAVE AS MUCH –

MS. COOPER: BERGER DOESN'T DEAL WITH THE WAY THIS SO-CALLED INSPECTION WAS EXECUTED, YOUR HONOR.

THE COURT: IT'S ALMOST IDENTICAL.

MS. COOPER: NO.

THE COURT: I WANT TO TELL YOU THAT I PERSONALLY IDENTIFY WITH THE DISSENT IN BERGER, BUT I AM BOUND BY THE LAW LIKE ANY OTHER JUDGE.

MS. COOPER: THIS WAS EXECUTED LIKE A FULL-BLOWN SEARCH.

THE COURT: I'M GOING TO MAKE A FINDING IT'S PRETEXTUAL AND IT'S REALLY A CRIMINAL SEARCH, BUT I STILL THINK IT'S VALID

MS. COOPER: I RESPECTFULLY DISAGREE BECAUSE –

THE COURT: YOU CAN PERSUADE ME. I WRESTLED WITH THIS [p. 2] FOR DAYS. THIS HAS BEEN ONE OF MY CLOSER CALLS AS A JUDGE.

MS. COOPER: REALLY?

THE COURT: YES.

THERE SHOULDN'T HAVE BEEN THAT MUCH LAUGHTER FROM MS. BAUTISTA. PUT THAT ON THE RECORD.

MS. COOPER: YOUR HONOR, I DON'T BELIEVE THAT THE COURT – DO YOU KNOW WHAT THE ACTUAL FACTS ARE IN THE BERGER CASE?

THE COURT: I READ IT YESTERDAY AGAIN FOR THE SECOND TIME. THANK YOU.

MS. COOPER: THE INSPECTION WENT DOWN – IT DIDN'T GO DOWN LIKE THIS.

THE COURT: IN BERGER – BERGER WAS MORE EGREGIOUS THAN THIS IN A FACTUAL SENSE.

MS. COOPER: I DON'T AGREE WITH THE COURT ON THAT.

THE COURT: BUT I DON'T THINK THAT'S THE ISSUE.

I FIND – I'LL MAKE THIS FINDING FOR EITHER ONE OF YOU IS GOING TO GO UP ON APPEAL, AND I

THINK YOU SHOULD. I FIND THE SEARCH HERE WAS A PRETEXT.

I FURTHER FIND THEY WENT IN THERE – THIS WAS A RESULT OF A CRIMINAL INVESTIGATION AND THE USE OF THE ADMINISTRATIVE SEARCH UNDER – WHAT IS IT? – 805? 405?

MS. COOPER: 2805.

THE COURT: 2805. AND THAT'S EVIDENCED BY THE FACT THEY HAD FIVE INSPECTORS AND A LIEUTENANT GOING THERE 5:15 AT NIGHT. THEY DID NOT GO TO THE OFFICE AS A FACTUAL MATTER; THEY IMMEDIATELY WENT TO SEARCH. THERE WAS SIX TO EIGHT CARS THERE, I PRESUME EACH INSPECTOR EXAMINING ONE [p. 3] CAR. AND THAT'S THE REASON I FIND THAT THE ADMINISTRATIVE PORTION WAS A PRETEXT FOR THE CRIMINAL SEARCH.

NEVERTHELESS, UNDER U.S. V. BERGER, I MUST FIND THAT YOUR MOTION TO SUPPRESS BE DENIED. AS I SAY, I'M SYMPATHETIC FROM A PHILOSOPHIC POINT OF VIEW WITH THE DISSENT IN BERGER, BUT I FEEL I'M BOUND.

MS. COOPER: YOUR HONOR, IS THE COURT DEALING AT THIS POINT WITH THE CONSENT AT ALL, BECAUSE THAT'S A SEPARATE –

THE COURT: THAT'S A SEPARATE ISSUE, BUT ESSENTIALLY THEY GET IN UNDER THE SAME PRETEXT. ONCE THEY GET IN THERE, I DON'T SEE – I THINK THERE IS VALID CONSENT. AFTER ALL, THEY GO IN THERE AND HE TAKES THEM INTO THE

OFFICE BECAUSE HE'S GOING TO GET HIS 1994 PERMIT FROM THE D.A.R. THEY SEE THE KNIFE – THAT'S UNDISPUTED – THEY SEE THE KNIFE THERE, THEY ASK HIM TO STEP AWAY FROM IT. THAT'S REASONABLE. WHAT'S UNDER THE PAPER IS A LOADED GUN, WHICH IS REGISTERED, AND THAT LEADS TO THE OTHER GUNS.

I REALIZE WHEN THEY FIND THE MARIJUANA HE'S HANDCUFFED – AFTER THAT, HE'S HANDCUFFED, BUT I THINK THAT THE REST OF IT IS CONSENTUAL [sic].

MS. COOPER: THE COURT IS RULING DESPITE THE FACT HE WAS HANDCUFFED AND HE WAS AFRAID, THE CONSENT TO GO TO THE OTHER RESIDENCE IS VALID?

THE COURT: I THINK THAT'S VALID. I AM TRULY TROUBLED WITH THAT.

MS. COOPER: WELL, WE'LL TRY TO RESOLVE THAT TROUBLE IN A DIFFERENT PLACE, AS THEY SAY, YOUR HONOR.

THE COURT: THAT'S WHAT THE APPELLATE COURTS ARE FOR.

[p. 4] AS I SAY, MY INSTINCTS WERE TO FIND THE SEARCH ILLEGAL; BUT QUITE HONESTLY, I TOLD MR. JANKOWITZ ON FRIDAY – I TOLD HIM I DIDN'T HAVE A COPY; HE BROUGHT ME U.S. V. BERGER.

I WAS HERE YESTERDAY, AS WELL AS JUDGE GARCIA. I WANT YOU TO KNOW WE JUDGES WORK ON SUNDAY.

ANYWAY, THE MOTION IS DENIED.

THIS IS THE TRIAL DATE. I PRESUME YOU'RE LOOKING FOR A NEW TRIAL DATE.

MS. COOPER: YOUR HONOR, I THINK IT MIGHT BE POSSIBLE – BECAUSE THE CASE HAS BEEN ALREADY THROUGH PRETRIAL AND WE HAVE A PRE-PLEA REPORT, I THINK IT'S POSSIBLE MAYBE WE CAN JUST RESOLVE IT IN HERE AT THIS POINT IF YOU WANT TO KEEP IT.

THE COURT: YES. I CAN DO THAT LATER THIS MORNING.

MS. COOPER: WE HAD A PRETRIAL IN FRONT OF JUDGE WILLIAMSON. I THINK I MENTIONED IT TO YOU.

THE COURT: YOU BOTH ADVISED ME OF WHAT THE –

MS. COOPER: AND WE HAVE A REPORT HERE THAT'S QUITE COMPLETE. THERE ARE A COUPLE OF PROBLEMS THAT I NEED TO TAKE UP WITH MR. JANKOWITZ.

THE COURT: WHY DON'T YOU TAKE THEM UP. I'VE GOT ANOTHER MATTER AND SEVERAL OTHER CASES SET FOR TRIAL.

MR. JANKOWITZ: YOU WANT US TO COME BACK 11:00 O'CLOCK?

THE COURT: GO OUTSIDE. IT WILL TAKE YOU TEN MINUTES.

(WHEREUPON, THE PROCEEDINGS RECESSED.)

THE COURT: THIS IS 153317.

YOUR APPEARANCES, COUNSEL.

MS. COOPER: PENNY COOPER FOR MR. YOUNG, WHO'S [p. 5] PRESENT.

MR. JANKOWITZ: STEWART JANKOWITZ FOR THE PEOPLE.

THE COURT: I UNDERSTAND THERE'S GOING TO BE A DISPOSITION IN THIS MATTER.

MS. COOPER: YES, YOUR HONOR. AS I INDICATED TO THE COURT, MR. YOUNG IS GOING TO PLEAD TO THE FIRST 12 COUNTS OF THE INDICTMENT – EXCUSE ME – 11 COUNTS, AND I BELIEVE THE 12TH COUNTS WILL BE DISMISSED BECAUSE I'VE DONE SUCH A NOBLE JOB. 11 OUT OF 12; THAT'S PRETTY GOOD.

THE COURT: OKAY. WHY DON'T YOU VOIR DIRE HIM.

MS. COOPER: MR. YOUNG, I'M GOING TO MAKE A STATEMENT TO THE COURT ABOUT YOUR CASE; IT'S VERY IMPORTANT THAT LISTEN TO IT CAREFULLY.

YOUR HONOR, NORMAN YOUNG WANTS TO ENTER A PLEA OF GUILTY TO THE CHARGES OF POSSESSION OF A MACHINE GUN, POSSESSION OF A WEAPON WITH AN ALTERED SERIAL NUMBER OR NO SERIAL NUMBER AND TEN COUNTS OF POSSESSION OF ASSAULT WEAPONS.

THE CLERK: WE NEED THE CODE SECTIONS.

MS. COOPER: THE FIRST COUNT, POSSESSION OF A MACHINE GUN, IS SECTION 12220 OF THE PENAL CODE; THE SECOND COUNT IS 12090 OF THE PENAL CODE AND THE NEXT NINE COUNTS ARE 12280(B) OF THE PENAL CODE.

I HAVE TOLD MR. YOUNG THAT SEVERAL CONSTITUTIONAL RIGHTS WILL BE GIVEN UP IF THE COURT ACCEPTS THIS PLEA INCLUDING, FIRST, HIS PRIVILEGE AGAINST SELF-INCRIMINATION; THAT IS, HE IS UNDER NO OBLIGATION TO SAY ANYTHING THAT MAY TEND TO INCRIMINATE HIM. AND I HAVE TOLD HIM THAT BY [p. 6] PLEADING GUILTY HE IS, IN FACT, INCRIMINATING HIMSELF.

SECOND, HIS RIGHT TO BE TRIED BY A JURY. IN THIS REGARD, I'VE ADVISED HIM THAT HE CANNOT BE CONVICTED UNLESS ALL 12 JURORS AGREE THAT THE PROSECUTION HAS PROVED HIS GUILT BEYOND A REASONABLE DOUBT.

THIRD, HIS RIGHT TO SEE AND HEAR HIS ACCUSERS TESTIFY IN OPEN COURT IN HIS PRESENCE AND TO HAVE HIS ATTORNEY CROSS-EXAMINE THEM.

WE HAVE DISCUSSED THE ELEMENTS OF THE CHARGES AGAINST HIM AND THE POSSIBLE DEFENSES TO THE CHARGES, AND I HAVE ADVISED HIM OF THE LAW AS IT RELATES TO THE FACTS OF HIS CASE. I HAVE ADVISED HIM OF THE LEGAL CONSEQUENCES OF A GUILTY PLEA TO THE

CHARGES AND THAT THE PUNISHMENT FOR THESE OFFENSES IS –

DID YOU FIGURE THIS OUT? IT'S ABOUT TEN YEARS. THEY'RE ALL 16, TWO AND THREE.

MR. JANKOWITZ: DOES THE COURT HAVE A PENAL CODE?

MS. COOPER: ACTUALLY, I DO HAVE IT FIGURED OUT.

THE COURT: IT CAN'T BE MORE THAN SIX. IT CAN'T BE MORE THAN THE GREATEST – IT CAN'T BE MORE THAN SIX.

MS. COOPER: THAT'S CORRECT.

THE COURT: DOUBLE BASE TERM IF YOU USE THE AGGRAVATED.

MR. JANKOWITZ: SIXTEEN, TWO AND THREE.

MS. COOPER: I THINK THEY'RE THE SAME.

MR. JANKOWITZ: YES, 16, TWO OR THREE. AND 12090 –

MS. COOPER: THAT'S 16, TWO AND THREE.

THE COURT: SIX YEARS IS THE MAXIMUM.

MS. COOPER: I HAVE ADVISED HIM OF THE LEGAL [p. 7] CONSEQUENCES OF A GUILTY PLEA TO THE CHARGE AND THAT THE POSSIBLE PUNISHMENT FOR THE OFFENSES IS UP TO SIX YEARS IN STATE PRISON.

UPON HIS RELEASE FROM CUSTODY, HE MIGHT BE PLACED ON PAROLE FOR A PERIOD OF FOUR YEARS FROM THE DATE OF HIS INITIAL PAROLE. HOWEVER, IF PAROLE IS REVOKED, CONFINEMENT PURSUANT TO A REVOCATION OF PAROLE IN THE ABSENCE OF A NEW CONVICTION AND COMMITMENT TO PRISON UNDER OTHER PROVISIONS OF LAW SHALL NOT EXCEED A YEAR EXCEPT AS PROVIDED BY PENAL CODE SECTION 3057(C), SUBSEQUENT ACTS OF MISCONDUCT COMMITTED BY A PAROLEE WHILE CONFINED PURSUANT TO THAT PAROLE REVOCATION.

THE COURT: WHAT'S THE PROPOSED DISPOSITION? I GUESS THIS IS OPEN TO THE COURT.

MS. COOPER: RIGHT. THE PLEA WOULD BE OPEN TO THE COURT, YOUR HONOR. AND I UNDERSTAND THAT MR. JANKOWITZ WILL DISMISS THE 11359, WHICH IS THE 12TH COUNT.

THE COURT: MR. YOUNG – 12TH AND 13TH; ISN'T IT?

MS. COOPER: IT IS?

THE COURT: THE LAST TWO COUNTS.

MS. COOPER: JUST COUNT 12, YOUR HONOR.

THE COURT: OH. SO HE'S PLEADING TO 11.

MS. COOPER: RIGHT.

THE COURT: MR. YOUNG, HAVE YOU HEARD AND UNDERSTOOD EVERYTHING SAID HERE TODAY?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: DO YOU PERSONALLY GIVE UP YOUR PRIVILEGE NOT TO INCRIMINATE YOURSELF?

[p. 8] THE DEFENDANT: YES, YOUR HONOR.

THE COURT: DO YOU PERSONALLY GIVE UP YOUR RIGHT TO BE TRIED BY A JURY?

THE DEFENDANT: YES. YOUR HONOR.

THE COURT: DO YOU PERSONALLY GIVE UP YOUR RIGHT TO SEE, QUESTION, CONFRONT AND CROSS-EXAMINE THE WITNESSES AGAINST YOU?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: WHERE WERE YOU BORN, MR. YOUNG?

THE DEFENDANT: TAIPEI, TAIWAN.

THE COURT: IF YOU'RE NOT A CITIZEN, YOU ARE HEREBY ADVISED CONVICTION OF THE OFFENSE WHICH WITH YOU HAVE BEEN CHARGED MAY HAVE THE CONSEQUENCE OF DEPORTATION, EXCLUSION FROM ADMISSION TO THE UNITED STATES OR DENIAL OF NATURALIZATION PURSUANT TO THE LAWS OF THE UNITED STATES. DO YOU UNDERSTAND THAT?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: DO YOU REALIZE IF YOU'RE GRANTED PROBATION AND YOU VIOLATE ANY OF THE TERMS AND CONDITIONS OF THAT PROBATION, YOU COULD BE SENTENCED TO STATE PRISON

UP TO SIX YEARS WITHOUT A TRIAL. DO YOU UNDERSTAND THAT?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: NORMAN YOUNG, WHAT'S YOUR PLEA TO VIOLATING PENAL CODE SECTION 12220 AS CHARGED IN COUNT ONE OF THE INFORMATION?

THE DEFENDANT: GUILTY.

THE COURT: WHAT'S YOUR PLEA TO VIOLATING PENAL CODE SECTION 12090 AS CHARGED IN COUNT TWO OF THE INFORMATION?

[p. 9] THE DEFENDANT: GUILTY.

MR. JANKOWITZ: I DON'T KNOW IF IT MAKES A DIFFERENCE, BUT IT'S AN INDICTMENT.

THE COURT: NO, IT DOESN'T MAKE A DIFFERENCE.

WHAT IS YOUR PLEA TO VIOLATING PENAL CODE SECTION – COUNT THREE IN THE INDICTMENT, A VIOLATION OF PENAL CODE SECTION 12280(B)?

THE DEFENDANT: GUILTY.

THE COURT: WHAT IS YOUR PLEA TO COUNT FOUR, A VIOLATION OF PENAL CODE SECTION 12280(B)?

THE DEFENDANT: GUILTY.

THE COURT: WHAT IS YOUR PLEA TO COUNT FIVE, A VIOLATION OF PENAL CODE SECTION 12280(B)?

THE DEFENDANT: GUILTY.

THE COURT: WHAT IS YOUR PLEA TO VIOLATING SECTION 12280(B) AS CHARGED IN COUNT SIX?

THE DEFENDANT: GUILTY.

THE COURT: WHAT IS YOUR PLEA TO VIOLATING SECTION 12280(B) AS CHARGED IN COUNT SEVEN OF THE INDICTMENT?

THE DEFENDANT: GUILTY.

THE COURT: WHAT IS YOUR PLEA TO VIOLATING SECTION 12280(B) AS CHARGED IN COUNT EIGHT?

THE DEFENDANT: GUILTY.

MS. COOPER: I SEE WHAT THE PROBLEM IS. THERE IS NO COUNT NINE.

THE COURT: I APPRECIATE THAT. THERE'S A TYPO. IT'S AN IX.

WHAT IS YOUR PLEA TO COUNT NINE, VIOLATING PENAL CODE [p. 10] SECTION 12280(B)?

THE DEFENDANT: GUILTY.

THE COURT: IN COUNT TEN, WHAT IS YOUR PLEA TO VIOLATING PENAL CODE SECTION 12280(B)?

THE DEFENDANT: GUILTY.

THE COURT: AND COUNT ELEVEN, YOUR PLEA TO VIOLATING PENAL CODE SECTION 12280(B)?

THE DEFENDANT: GUILTY.

THE COURT: THE COURT HAVING DISCUSSED THE FACTS WITH RESPECTIVE COUNSEL FINDS A FACTUAL BASIS FOR THE PLEAS ENTERED BY THE DEFENDANT.

THE COURT FURTHER FINDS THE DEFENDANT WAS INFORMED OF HIS RIGHTS, THAT HE VOLUNTARILY AND INTELLIGENTLY WAIVED THOSE RIGHTS AND HE ENTERED HIS PLEA OF GUILTY WELL KNOWING THE CONSEQUENCES OF THE PLEA. THEREFORE, THE PLEA WILL BE ACCEPTED.

WAIVE FORMAL ARRAIGNMENT FOR JUDGMENT?

MS. COOPER: YES, YOUR HONOR, WE WAIVE TIME FOR JUDGMENT. I'VE SUBMITTED TO THE COURT A REPORT THAT WAS PREPARED IN CONNECTION WITH THIS CASE.

THE COURT: I REALIZE THAT, THE PROBATION OFFICER'S REPORT, WHICH I HAVE READ, DATED JUNE 8TH, '94.

ANY LEGAL CAUSE WHY JUDGMENT SHOULD NOT NOW BE PRONOUNCED?

MS. COOPER: NO, YOUR HONOR.

THE COURT: AS TO COUNT ONE, THE COURT WILL GRANT PROBATION FOR A PERIOD OF THREE YEARS.

CREDIT FOR TIME SERVED, ONE DAY.

[p. 11] HE'LL SUBMIT HIS PERSON, VEHICLE OR PREMISES TO A SEARCH, DAY OR NIGHT, WITH OR WITHOUT REASONABLE OR PROBABLE CAUSE, WITH OR WITHOUT A WARRANT, BY ANY PEACE OR PROBATION OFFICER.

FOR THE THREE-YEAR PERIOD HE'S ON PROBATION, HE'S TO POSSESS NO WEAPONS.

HE WILL PAY A RESTITUTION FINE OF $2200.00, 200 PER COUNT.

$150.00 FOR THE PREPARATION OF THE PRESENTENCE INVESTIGATION REPORT.

PROBATION COSTS OF UP TO $40.00 A MONTH.

$5,000 FINE PLUS THE PENALTY AS TO THAT COUNT.

AS TO COUNT TWO, IMPOSITION OF SENTENCE SUSPENDED, PROBATION FOR THREE YEARS TO RUN CONCURRENT WITH COUNT ONE. ALL THE TERMS AND CONDITIONS WILL BE THE SAME. THAT APPLIES TO COUNTS THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE, TEN AND ELEVEN. HE'S TO GET PROBATION ALL TO RUN CONCURRENT WITH THE SENTENCE IMPOSED ON COUNT ONE.

I DON'T THINK I HAVE TO SENTENCE HIM INDIVIDUALLY ON EACH COUNT.

MS. COOPER: NO.

MR. JANKOWITZ: AND THE COURT IS IMPOSING IMPOSITION OF SENTENCE SUSPENDED.

THE COURT: I SAID SUSPENDED. THREE YEARS PROBATION TO THE ADULT PROBATION DEPARTMENT.

IS THERE A MOTION TO COUNT TWELVE?

MR. JANKOWITZ: BEFORE I DO THAT, THE PEOPLE WOULD ASK FOR ONE MORE CONDITION.

[p. 12] THE COURT: THAT HE POSSESS NO WEAPONS.

MR. JANKOWITZ: NO, THAT THE FIREARMS THAT WERE SEIZED BE ORDERED TRANSFERRED TO THE CUSTODY OF THE SAN FRANCISCO POLICE DEPARTMENT TO PAY FOR THE COSTS OF THIS INVESTIGATION.

THE COURT: NO, I WON'T GO ALONG WITH THAT. I'LL ORDER THEM DESTROYED.

MS. COOPER: THAT'S FINE.

THE COURT: I DON'T WANT ANYBODY TO GET THOSE GUNS. ALL THE GUNS ARE ORDERED DESTROYED.

MR. JANKOWITZ: IF THE POLICE DEPARTMENT HAS A NEED FOR CERTAIN WEAPONS –

MS. COOPER: WELL, YOUR HONOR, THE POLICE DEPARTMENT DOESN'T HAVE ANY NEED FOR THESE WEAPONS.

THE COURT: I WON'T ARGUE WHETHER WE HAVE A NEED FOR THEM OR NOT, BUT THAT'S WHAT WE PAY TAXES FOR. LET THEM BUY THEM.

ALL GUNS WILL BE ORDERED DESTROYED.

MS. COOPER: YOUR HONOR, I WOULD REQUEST A STAY OF THE SENTENCE. AS THE COURT IS AWARE, WE WILL FILE A NOTICE OF APPEAL. I'LL HAVE IT ON FILE THIS WEEK.

THE COURT: WELL, WHY DON'T WE ORDER A PROBATION REPORT FROM AND HAVE HIM BE ON PROBATION, UNLESS YOU DON'T CARE ABOUT WHEN IT STARTS.

MS. COOPER: NO, I DON'T CARE WHEN IT STARTS. I'D RATHER EVERYTHING BE STAYED. IF YOU COULD STAY JUDGMENT PENDING APPEAL, AND I DO INFORM THE COURT THAT WE'LL HAVE THE NOTICE ON FILE WITHIN A DAY OR TWO.

[p. 13] THE COURT: ALL RIGHT. THAT WILL BE THE ORDER.

MR. JANKOWITZ: WITH REGARD TO COUNT TWELVE, YOUR HONOR, ALTHOUGH THIS IS A PLEA OPEN TO THE COURT, THE PEOPLE'S ORIGINAL RECOMMENDATION WAS STATE PRISON IN THIS CASE.

IN VIEW OF THE PLEA OF GUILTY TO COUNTS ONE THROUGH ELEVEN AND THE FACT THAT COUNT TWELVE WOULD ADD NO ADDITIONAL PENALTY, WE'D MOVE TO DISMISS.

THE COURT: THAT WILL BE THE ORDER.

(WHEREUPON, THE PROCEEDINGS CONCLUDED.)

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